

### **REMARKS**

This response is intended as a complete response to the Office Action dated April 14, 2010. In view of the following discussion, the Applicant believes that all claims are in allowable form.

### **IN THE DRAWINGS**

The drawings are objected to under 37 CFR 1.83(a) due to allegedly not showing the receiver tube having a first end that is removably connectable to a hearing aid and a second end that is removably connectable to a receiver of the hearing aid. However, in view of amendments to independent claims 21 and 37, which cancels those limitations, the Applicant submits that the rejection to the drawings is now moot.

Thus, the Applicant respectfully requests that the rejection be withdrawn.

### **CLAIM REJECTIONS**

#### **A. 35 USC §112 Claims 21-23, 25, 26, 37-43 and 46**

Claims 21-23, 25, 26, 37-43 and 46 stand rejected under 35 USC §112, second paragraph, as failing to comply with the written description requirement. The Examiner contends that the original specification does not disclose a receiver tube having a first end that is removably connectable to a hearing aid and a second end that is removably connectable to a receiver of the hearing aid as recited in claims 21 and 37.

However, in view of amendments to independent claims 21 and 37, which cancels those limitations, the Applicant submits that the above rejection is now moot.

Thus, the Applicant believes that all claims satisfy the conditions of 35 USC §112 and are patentable thereunder. Accordingly, the Applicant respectfully requests that the rejection be withdrawn and the claims allowed.

B. 35 USC §103 Claims 21-23, 25, 26, and 37-43

Claims 21-23, 25, 26, and 37-43 stand rejected under 35 USC. §103(a) as being unpatentable over United States Patent No. 5,970,157 issued October 19, 1999 to *Yoezt* (hereinafter *Yoezt*) in view of United States Patent No. 4,987,597 issued January 22, 1991 to *Haertl* (hereinafter *Haertl*). The Applicant respectfully disagrees. However, to expedite prosecution, the Applicant has amended claims 21 and 37 to more clearly recite aspects of the present invention.

Specifically, the Applicant has amended claim 21 to incorporate limitations similar to claim 46. Claim 21 has further been amended, as discussed above, to overcome the rejection under 35 USC §112. As claim 46 is not rejected by any combination of the cited art, the Applicant submits that claim 21, and all claims depending therefrom, are patentable over the cited art and in condition for allowance.

In addition, the Applicant has amended claim 37 to incorporate the limitations of claims 42 and 44. Accordingly, claims 42 and 44 have been cancelled and claims 45-49 have been amended to correct dependency from cancelled claim 42 to claim 37. In addition, although claim 44 was previously withdrawn, the Applicant submits that the claim was inadvertently identified as a separate species in the restriction requirement mailed December 24, 2008. Specifically, the restriction requirement required restriction between species related to how the receiver tube is coupled to the receiver and also included the limitations of claim 44 as a separate species. However, the subject matter of claim 44 relates to a funnel for guiding the receiver tube into position with respect to the receiver and is applicable to the various species of coupling the receiver tube to the receiver, including the elected species. As such, the Applicant submits that the inclusion of the limitations of claim 44 to further narrow the elected species is allowable. Thus, the Applicant respectfully requests entry and consideration of the present amendment to claim 37.

Independent claim 37 recites limitations not taught, suggested, or otherwise led to by any combination of the cited art. *Yoezt* teaches a hearing aid

10 having a shell 12 that supports or encloses a microphone 14, amplification circuitry, and a receiver 16. A receiver tube 22 coupled to the receiver 16 penetrates the shell 12 of the hearing aid 10. (*Yuest*, col. 3, ll. 48 – col. 4, l. 6; Fig. 2.) The receiver tube 22 may be removably coupled to the receiver 16, but is shown coupled to the shell 12 of the hearing aid 10. (*Id.*, Fig. 5A.) The receiver tube 1028 of *Yuest* is similarly described and shown as being coupled to a shell 1012 of a hearing aid 1010. (*Id.*, Fig. 16 and accompanying text.) An ear wax barrier 24 comprising a barrier screen 42 is positioned in the receiver tube 22 at a distal most portion 26 thereof. (*Id.*, Fig. 3, 3A.)

The Examiner contends that *Yuest* allegedly teaches that the receiver tube (22, 1028) is removably connectable to a hearing aid (10, 1010), citing figures 4, 5, 5A, 6 and 16. (*Office Action dated 04/07/09*, p. 2.) However, as discussed above, although the receiver tube (22, 1028) is removably coupled to the receiver (16, 1018), the receiver tube (22, 1028) is shown coupled to the shell (12, 1012) of the hearing aid (10, 1010) and is not shown removably coupled to the hearing aid (10, 1010). Nor does *Yuest* teach or suggest that the receiver tube is removably coupled to the hearing aid within the text. Accordingly, *Yuest* fails to teach a receiver tube removably connectable to a hearing aid, as recited in independent claim 37.

The Examiner admits that *Yuest* fails to teach an ear wax trap comprising a microporous membrane as recited in independent claim 37. (*Office Action dated 04/07/2009*, p. 2.) Accordingly, the Examiner cites *Haertl* to allegedly teach a microporous membrane as recited in claim 37.

*Haertl* discloses an apparatus for closing openings of a hearing aid, such as sound openings. (*Haertl*, Abstract.) The hearing aid includes a housing 1 which has a sound exit nozzle 2 (e.g., a receiver tube) at one end and is covered at the opposite end by an end cover 3. An earphone 4 (e.g., a receiver) has an output side connect to the sound exit nozzle 2. (*Id.*, col. 2, l. 58 – col. 3, ll. 10; Fig. 1.) The apparatus includes caps 12 and 13 which are respectively disposed

over a sound exit nozzle 2 and a cover 3. (*Id.*) Caps 12, 13 each have microporous PTFE membranes 14. (*Id.*, col. 3, ll. 11-14.)

*Heartl* teaches the sound exit nozzle 2 (e.g., a receiver tube) is coupled to the output side of the earphone 4 (e.g., a receiver). Further, the Examiner admits that *Heartl* fails to disclose a receiver tube (sound exit nozzle 2) removably coupled to the receiver (earphone 4). (*Office Action dated 05/02/2008*, p. 4.) As *Heartl* fails to disclose a receiver tube removably coupled to the receiver, *Heartl* further fails to disclose a funnel to guide the receiver tube to the receiver.

As such, the combination of *Heartl* and *Yoezt* fails to yield a receiver tube removably coupled to the hearing aid and the receiver, as recited in claim 37, or a funnel disposed about the opening of the receiver to guide the receiver tube to the opening, as also recited in independent claim 37. As such, a *prima facie* case of obviousness has not been established as the combination of the cited art fails to yield the limitations recited in the claims.

Thus, claims 37-43 are patentable over *Yoezt* in view of *Haertl*. Accordingly, the Applicant respectfully requests that the rejection be withdrawn and the claims allowed.

### **NEW CLAIM**

The Applicant has added new claim 50 to the application. New claim 50 reflects claim 46 in independent form, including all of the limitations of the base claim and all intervening claims, as amended to overcome the 35 USC §112 rejection. Claim 46 was only rejected under 35 USC §112. The Applicant submits that this new claim adds no new matter. As such, the Applicant believes that claim 50 is allowable over the art of record and accordingly requests entry and allowance of the claim.

**CONCLUSION**

Thus, the Applicant submits that all claims now pending are in condition for allowance. Accordingly, both further consideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that any unresolved issues still exist, it is requested that the Examiner telephone Alan Taboada at (732) 935-7100 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

July 14, 2010

/ Alan Taboada /

Alan Taboada, Esq.

Reg. No. 51,359

(732) 935-7100

Moser IP Law Group  
1030 Broad Street, Suite 203  
Shrewsbury, NJ 07702